

## § 36.4308

## 38 CFR Ch. I (7-1-04 Edition)

of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.

[13 FR 7739, Dec. 15, 1948, as amended at 24 FR 2653, Apr. 7, 1959; 40 FR 34590, Aug. 18, 1975]

### **§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.**

(a) Except as provided by paragraphs (b) or (c) of this section the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed or insured in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty or insurance.

(b)(1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(Authority: 38 U.S.C. 3703(c))

(c) Any housing loan which is financed under 38 U.S.C. chapter 37, and to which section 3714 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the as-

sumption of the loan is established pursuant to section 3714.

(1) A holder may not exercise its option to accelerate a loan upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to the transfer of rights of occupancy in the property;

(ii) The creation of a purchase money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest of three years or less not containing an option to purchase;

(v) A transfer to a relative resulting from the death of a borrower;

(vi) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(vii) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4323 of this part; or

(viii) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(2) With respect to each such loan at least one of the instruments used in the transaction shall contain the following statement: "This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent." This statement must be:

(i) Printed in a font size which is the larger of:

(A) Two times the largest font size contained in the body of the instrument; or

(B) 18 points; and

(ii) Contained in at least one of the following:

(A) The note;

(B) The mortgage or deed of trust; or

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(C) A rider to either the note, the mortgage, or the deed of trust.

Authority: (38 U.S.C.3714(d))

(d) The term of payment of any guaranteed or insured obligation shall bear a proper relation to the borrower's present and anticipated income and expenses, (except loans pursuant to 38 U.S.C. 3710(a)(8) or (9)(B)(i)). In addition the terms of payment of any guaranteed or insured obligation shall provide for discharge of the obligation at a definite date or dates or intervals, in amount specified or computable from the face of the instrument. A loan which is payable on demand, or at sight, or on presentation, or at a time not specified or computable from the language in the note, mortgage, or other loan instrument, or which contemplates periodic renewals at the option of the holder to satisfy the repayment requirements of this section, is not eligible for guaranty or insurance, except as provided in paragraph (f) of this section.

(e) No guaranteed or insured obligation shall contain a provision to the effect that the holder shall have the right to declare the indebtedness due, or to pursue one or more legal or equitable remedies, if holder "shall feel insecure," or upon the occurrence of one or more such conditions optional to the holder, without regard to an act or omission by the debtor, which condition by the terms of the note, mortgage, or other loan instrument would at the option of the holder afford a basis for declaring a default.

(f) Notwithstanding the inclusion in the guaranteed or insured obligation of a provision contrary to the provisions of this section, the right of the holder to payment of the guaranty or insurance shall not be thereby impaired: *Provided,*

(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or

(2) Activation or enforcement of such provision is warranted under § 36.4317 (a), or

(3) The prior approval of the Secretary was obtained.

(Authority: 38 U.S.C. 3703(c))

(g) The holder of any guaranteed or insured obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity or such obligation at any time after the continuance of any default for the period specified in § 36.4316.

(h) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any security for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless:

(1) The prior approval of the Secretary is obtained to do otherwise, or

(2) Reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law.

A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges plus any reasonable expenses incurred and paid by the holder if termination proceedings have begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.).

(Authority: 38 U.S.C. 501, 3703(c), 3712(g))

(Approved by the Office of Management and Budget under OMB control number 2900-0516)

[13 FR 7739, Dec. 15, 1948, as amended at 15 FR 4397, July 12, 1950; 43 FR 53728, Nov. 17, 1978; 46 FR 43673, Aug. 31, 1981; 46 FR 51386, Oct. 20, 1981; 50 FR 3335, Jan. 24, 1985; 55 FR 37476, Sept. 12, 1990; 55 FR 39404, Sept. 27, 1990; 68 FR 6627, Feb. 10, 2003]

### § 36.4309 Amortization.

(a) All loans, the maturity date of which is beyond 5 years from date of loan or date of assumption by the veteran, shall be amortized. Except as provided in paragraph (e) of this section, the schedule of payments thereon shall be in accordance with any generally recognized plan of amortization requiring approximately equal periodic payments and shall require a principal reduction not less often than annually during the life of the loan. The final installment on any loan shall not be in excess of two times the average of the